IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

IN RE:	§	
	§	
PRIDE COMPANIES, L.P.,	§	CASE NO. 01-10041-RLJ-11
	§	
Debtor.	§	

PRIDE COMPANIES, L.P.,	§	
	§	
Plaintiff	§	
	§	
v.	§	ADVERSARY NO. 01-1011
	§	
DAVID C. JOHNSON, DANIEL M. BELF, DAVID D. BONDS, MICHAEL H. CHASE, AND WILLIAM F. YOCUM,	§	
	§	
Defendants.	§	

MEMORANDUM OPINION

Preliminary Statement

This adversary proceeding arises out of proofs of claim filed by the Defendants David Johnson, Daniel Belf, David Bonds, Michael Chase, and Williams Yocum (collectively the Former Employees). Plaintiff Pride Companies, L.P. (Pride) objected to the claims and the issues raised were converted to an adversary proceeding with Pride filing its original complaint on July 23, 2001, as amended July 25, 2001. Trial was held November 26, 2001. On December 21, 2001, the court announced its ruling on the record, holding that the Former Employees are entitled to share in both the $300,000.00 bonus paid by Pride in 1999 and the $6,960,824.00 bonus (the $6.9 million bonus) paid by Pride in 2000. In addition, the court reopened the evidence to allow the parties to offer additional evidence concerning the amount of bonus each Former Employee is entitled to receive. Hearing to consider the additional evidence was held February 28, 2002.

This court has jurisdiction of this matter under 28 U.S.C. §§ 1334 and 157. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B)(C)(O). This Memorandum Opinion contains the court's findings of fact and conclusions of law. FED. R. BANKR. P. 7052, 9014.

Pride proposes that the Former Employees share $166,000.00, which constitutes 5/9ths of the $300,000.00 bonus paid out in 1999, plus $125,000.00, which is tied to the historical maximum bonus ever received by any of the Former Employees. The Former Employees argue, principally with respect to the $6.9 million bonus, that their respective ownership of Unit Appreciation Rights entitles each one of them to approximately the same bonus as was awarded to George Percival.[1] Percival received $696,082.00, which constitutes a 10% share of the bonus.

<u>Discussion</u>

The court's December 21 ruling included findings of fact and conclusions of law that the court hereby incorporates by reference to a transcript of the ruling, a copy of which is attached hereto.

To reiterate from the court's findings, it is noted that the $6.9 million bonus was paid out to the so-called "Key Executives" – Brad Stephens, Wayne Malone, Dave Caddell, and George Percival – on a 35%-35%-20%-10% ratio, respectively. This corresponds directly with the Unit Appreciation Rights held by each of the key executives. The ownership of the Unit Appreciation Rights by each of the key executives is as follows:

[1]The "Unit Appreciation Rights" are rights obtained by certain officers and key employees of Pride that in turn allow them the opportunity to benefit from the appreciation in value of the common units of Pride. *See* Exhibit "A" to Plaintiff's Ex. 11.

Name	**Ownership of Unit Appreciation Rights**
Stephens	56,000
Malone	56,000
Caddell	32,000
Percival	16,000

Plaintiff's Ex. 28.

The Former Employees, along with several other employees, also own Unit Appreciation Rights. Specifically, each Former Employee owns 15,868 units, slightly less than that owned by George Percival. Plaintiff's Ex. 28.[2]

On October 1, 1999, the assets of the crude gathering division of Pride were sold to Sun Pipe and Line Services, Inc. for approximately $30 million. The $300,000.00 bonus was funded with proceeds of the sale. Plaintiff's Ex. 39; Plaintiff's Ex. 30.

<u>The $300,000 Bonus</u>

The Former Employees were each district managers in the crude gathering division of Pride. As such, they were integrally involved in the operation of the crude gathering division. The employment agreements were proposed as a means to encourage the Former Employees to stay on with Pride to maintain continuity of operations of the crude gathering division and thereby enhance the value of a potential sale. They therefore played a major role in generating the $30 million that was realized from the sale. Their employment agreements granted them each the right to share in the same bonus plan as

[2] Distribution of the $300,000 bonus as among the four key executives also has a close correlation to their ownership of Unit Appreciation Rights. Stephens and Malone each received $97,900.00, Caddell received a total of $57,900.00, Percival received $30,000.00, and Peter Corcoran (not one of the key executives) received $16,300.00. This means that Stephens and Malone received approximately 32% each, Caddell 19%, Percival 10% and Corcoran 5%. While these are approximate numbers, it appears that Stephens, Malone, and Caddell each gave up a small percentage to allow the distribution of Corcoran's 5%. Otherwise, the distribution of the $300,000.00 bonus, as among the four key executives, would be identical to their ownership of Unit Appreciation Rights.

did the key executives. Given such right, they were entitled, and the court so finds, to an equal share of the $300,000.00 bonus. Pride recognizes this in its proposals. Plaintiff's Ex. 53.[3] As there were five individuals that were paid a bonus, plus the five Former Employees, the court concludes that the Former Employees are entitled to the aggregate of 5/10ths of the $300,000.00, or $150,000.00. The Former Employees would share such amount equally and each would thereby have been entitled to $30,000.00, the same amount awarded to Mr. Percival.

The $6.9 Million Bonus

The $6.9 million bonus is more problematic. The court has already ruled that each Former Employee is entitled to significantly less than that awarded to Mr. Percival. They contend, and credibly so, that the split among the four key executives was based solely on each of the key executive's ownership of Unit Appreciation Rights. While Pride disavows this, the payment of the bonuses does indeed correlate directly with the key executives' ownership of the Unit Appreciation Rights. The $6.9 million bonus was established under the Annual Incentive Plan. The Annual Incentive Plan states, in relevant part, as follows:

> This Annual Incentive Plan (the "Plan") is intended to assist in attracting and retaining key executives and managers of Pride Companies, L.P. (the "Company"), by linking the financial objectives and interests of such key executives and managers with those of the Company.
>
> 1. Administration of the Plan. The Plan is to be administered by a committee (the "Committee") composed of three outside directors of the managing

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[3]Pride's proposal is based on 5/9ths of $300,000.00, apparently assuming there would be nine individuals sharing the $300,000.00 if the five Former Employees were included. However, there were actually five executives that received a share of the $300,000.00 bonus that, when added to the five Former Employees, would result in ten total individuals sharing in the $300,000.00 bonus. Pride's inclusion of only nine individuals that share may be based on the number of employees that have employment agreements.

general partner of the Company (the "Managing General Partner"). The Chairman, CEO and President of the Managing General Partner will recommend suggested annual awards for participants in the Plan, and will make other recommendations to the Committee as appropriate, including recommendations to add or remove participants to or from the Plan. The Committee has the sole authority to administer the Plan.

All actions, determinations and decisions made by the Committee shall be final, conclusive and binding upon all parties concerned. The Committee shall have the full authority to interpret the Plan, to establish or revise rules and regulations relating to the Plan and to make any determinations necessary to administer the Plan.

. . .

2. Bonus Pools. At the end of each Plan year, which shall be the calendar year, the Company will establish two bonus pools, one pool for key executives, and a second pool for middle manages, based upon the Company's Cash Flow in such Plan Year.

(a) The Key Executive Bonus Pool, subject to the discretion of the Committee, will be funded as follows:

(1) 8% of the Company's first $2 million of Cash Flow in excess of $10 million, plus

(2) 12% of the Company's next $4 million of Cash Flow, plus

(3) 15% of the Company's Cash Flow in excess of $16 million.

(b) The Middle Management Bonus Pool shall be funded with up to 4% of Cash Flow at the discretion of the Committee if Cash Flow exceeds $8 million.

3. Participation in Bonus Pools. The Committee shall determine in its sole discretion, for each Plan year, which employees of the Company will share, and to what extent, in each bonus pool. The Committee's decision will be based on recommendations from the Chairman, the Chief Executive Officer and the President of the Managing Partner of the Company.

Defendants' Ex. 4.[4]

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[4]The $10 million threshold set forth at paragraph 2(a)(1) was reduced to $8 million in January 1998 and then to $2 million in November 1999. Plaintiff's Exs. 28 and 30. The calculation of the $6.9 million bonus was therefore

The Plan establishes two bonus pools, the key executive bonus pool and a middle management bonus pool. Assuming the thresholds are met and either or both of the bonus pools are created, the committee charged with administering the Plan (i.e., the Compensation Committee) must make two decisions. It must first decide the employees that are eligible to participate in the Plan and, second, determine the amount each eligible participant shall receive. These decisions are solely within the discretion of the Compensation Committee. No contention is made that the key executives should not have been eligible for the bonus. Moreover, the court has already held that the allocation as among the key executives was not improper, unreasonable, or contrary to company procedures.

The creation of the bonus pools is based on objective criteria that is, in turn, tied to cash flow. In contrast, the process of selecting those individuals who will receive a bonus and setting the amount each will receive is totally discretionary. This procedure is not at issue, however. As the court has previously ruled, Pride (and specifically the Compensation Committee) could not ignore the Former Employees when awarding a bonus to the key executives. The Former Employees were entitled to participate in the same bonus plan as if they were also key executives. Their eligibility was established under their respective employment agreements.

In determining the amount that each was entitled to receive, the court is mindful of, and somewhat uncomfortable with, the seemingly standardless criteria employed by the Compensation Committee. However, Pride's executives consistently testified that bonuses are merit based; they are tied to one's participation in generating the cash flow that gives rise to the bonus. While Pride denies that the split of the $6.9 million bonus was based on the key executive's ownership of Unit

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based on the $2 million threshold.

Appreciation Rights, it certainly appears that the Unit Appreciation Rights served as a convenient criteria for awarding the $6.9 million bonus as among the four key executives. As the four key executives constitute the management of Pride, they can each take a measure of credit for the decisions made in connection with the DESC lawsuit.[5] To split the bonus in accordance with their ownership of Unit Appreciation Rights does not mean the split was not merit based. While they were all entitled to a bonus, which is not at issue here, the Compensation Committee had to arrive at a fair split. The use of the Unit Appreciation Rights in this regard, whether coincidental or intentional, accomplished this goal.

In determining the claim of the Former Employees, the court considers the Former Employees' involvement in the DESC lawsuit. The four key executives had the responsibility of managing the company and were therefore responsible for investigating the factual and legal basis for the lawsuit, and for initiating and ultimately prosecuting the lawsuit to conclusion. George Percival, who received the smallest portion of the $6.9 million bonus, had served as Chief Financial Officer of Pride since August 1994. Plaintiff's Ex. 39. His involvement in the DESC lawsuit included calculating Pride's potential recovery based on Pride's theory of the case, and preparing models that address the different theories advanced by Pride. He was, therefore, involved in management's discussions and decisions regarding the DESC lawsuit.

In contrast to the key executives, middle management, while perhaps aware of the suit, did not have input in the major decisions regarding the suit. Because middle management had little or no involvement in the lawsuit, no middle managers "merited" a bonus. Without the employment

[5]"DESC lawsuit" refers to Pride's suit against the Defense Energy Support Center of the United States by which Pride recovered approximately $60 million in May 2000 and thus generated the proceeds for the $6.9 million bonus. The court's December 21 ruling refers to this suit as the "DFSC lawsuit."

agreements, the Former Employees would not have been eligible to share in the bonus. The court therefore rejects their argument that they are entitled to approximately the same bonus as was awarded to any of the key executives, particularly George Percival.

The court reviews the evidence presented in determining the amount of bonus each Former Employee should have received. The proposals presented by Pride at the February 28 hearing are based on either a historical analysis by looking at the largest bonuses ever received by any of the Former Employees, or on calculations tied to the middle management bonus pool. The court is not satisfied with these proposals. Neither sufficiently recognizes the extraordinary nature, at least in amount, of the DESC recovery. The court therefore looks to the evidence presented at the November 26 hearing. There was consistent and credible testimony regarding discussion of a 5% bonus being promised to the Former Employees. Such bonus was to be tied to a baseline number, which, presumably, was tied to cash flow. The court held that such discussions were insufficient to create a right to a bonus. However, by using the $6.9 million bonus as established under the Annual Incentive Plan as a baseline, and applying the 5% to such baseline number, it yields a total bonus of $348,041.20. The court finds that such amount, split equally among the five Former Employees, sets a fair and equitable amount within the range of evidence presented. *See Neiman-Marcus Group Inc. v. Dworkin*, 919 F.2d 368, 372 (5th Cir. 1990); *Price Pfister Inc. v. Moore & Kimmey Inc.*, 48 S.W.3d 341, 352 (Tex. App. – Houston [14th Dist.] 2001, pet. denied); *Duggan v. Marshall*, 7 S.W.3d 888, 893 (Tex. App. – Houston [1st Dist.] 1999, no pet.) ("The trier of fact has discretion to award damages within the range of evidence presented at trial"); *Cadle Co. v. Bankston & Lobingier*, 868 S.W.2d 918, 924 (Tex. App. – Fort Worth, writ denied).

Attorney's Fees

The court's December 21, 2001 ruling provided that counsel for the Former Employees could submit a motion setting forth any basis for awarding attorney's fees, as well as an affidavit itemizing the fees. While an affidavit has been filed, no motion has been made presenting a basis for an award of fees. Indeed, the count finds that the Former Employees, as unsecured creditors, are not entitled to recover their attorney's fees in this case. 11 U.S.C. §§ 506(b), 502(b).

Conclusion

Upon the foregoing, the court concludes that the Former Employees' share of the $300,000.00 bonus should have been $150,000.00; their share of the $6.9 million bonus should have been $348,041.20. They each, therefore, are awarded a claim in the principal amount of $99,608.24. They are entitled to prejudgment interest to the date of the bankruptcy filing. As set forth in the court's December 21 ruling, the claims for unpaid severance payments are allowed. All other relief requested by the parties is denied.

SIGNED May 14, 2002.

ROBERT L. JONES
UNITED STATES BANKRUPTCY JUDGE